

108TH CONGRESS
1ST SESSION

H. R. 1664

IN THE SENATE OF THE UNITED STATES

APRIL 10, 2003

Received; read twice and referred to the Committee on Finance

AN ACT

To amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Armed Forces Tax Fairness Act of 2003”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
 7 wise expressly provided, whenever in this Act an amend-
 8 ment or repeal is expressed in terms of an amendment
 9 to, or repeal of, a section or other provision, the reference
 10 shall be considered to be made to a section or other provi-
 11 sion of the Internal Revenue Code of 1986.

12 **SEC. 2. SPECIAL RULE FOR MEMBERS OF UNIFORMED**
 13 **SERVICES AND FOREIGN SERVICE IN DETER-**
 14 **MINING EXCLUSION OF GAIN FROM SALE OF**
 15 **PRINCIPAL RESIDENCE.**

16 (a) IN GENERAL.—Subsection (d) of section 121 of
 17 the Internal Revenue Code of 1986 (relating to exclusion
 18 of gain from sale of principal residence) is amended by
 19 adding at the end the following new paragraph:

20 “(10) MEMBERS OF UNIFORMED SERVICES AND
 21 FOREIGN SERVICE.—

22 “(A) IN GENERAL.—At the election of an
 23 individual with respect to a property, the run-
 24 ning of the 5-year period referred to in sub-
 25 sections (a) and (c)(1)(B) and paragraph (7) of

1 this subsection with respect to such property
2 shall be suspended during any period that such
3 individual or such individual's spouse is serving
4 on qualified official extended duty as a member
5 of the uniformed services or of the Foreign
6 Service.

7 “(B) MAXIMUM PERIOD OF SUSPENSION.—
8 Such 5-year period shall not be extended more
9 than 5 years by reason of subparagraph (A).

10 “(C) QUALIFIED OFFICIAL EXTENDED
11 DUTY.—For purposes of this paragraph—

12 “(i) IN GENERAL.—The term ‘quali-
13 fied official extended duty’ means any ex-
14 tended duty while serving at a duty station
15 which is at least 150 miles from such prop-
16 erty or while residing under Government
17 orders in Government quarters.

18 “(ii) UNIFORMED SERVICES.—The
19 term ‘uniformed services’ has the meaning
20 given such term by section 101(a)(5) of
21 title 10, United States Code, as in effect
22 on the date of the enactment of this para-
23 graph.

24 “(iii) FOREIGN SERVICE.—The term
25 ‘member of the Foreign Service’ has the

1 meaning given the term ‘member of the
 2 Service’ by paragraph (1), (2), (3), (4), or
 3 (5) of section 103 of the Foreign Service
 4 Act of 1980, as in effect on the date of the
 5 enactment of this paragraph.

6 “(iv) EXTENDED DUTY.—The term
 7 ‘extended duty’ means any period of active
 8 duty pursuant to a call or order to such
 9 duty for a period in excess of 180 days or
 10 for an indefinite period.

11 “(D) SPECIAL RULES RELATING TO ELEC-
 12 TION.—

13 “(i) ELECTION LIMITED TO 1 PROP-
 14 erty AT A TIME.—An election under sub-
 15 paragraph (A) with respect to any property
 16 may not be made if such an election is in
 17 effect with respect to any other property.

18 “(ii) REVOCATION OF ELECTION.—An
 19 election under subparagraph (A) may be
 20 revoked at any time.”.

21 (b) EFFECTIVE DATE; SPECIAL RULE.—

22 (1) EFFECTIVE DATE.—The amendment made
 23 by this section shall take effect as if included in the
 24 amendments made by section 312 of the Taxpayer
 25 Relief Act of 1997.

1 (2) WAIVER OF LIMITATIONS.—If refund or
2 credit of any overpayment of tax resulting from the
3 amendment made by this section is prevented at any
4 time before the close of the 1-year period beginning
5 on the date of the enactment of this Act by the oper-
6 ation of any law or rule of law (including res judi-
7 cata), such refund or credit may nevertheless be
8 made or allowed if claim therefor is filed before the
9 close of such period.

10 **SEC. 3. RESTORATION OF FULL EXCLUSION FROM GROSS**
11 **INCOME OF DEATH GRATUITY PAYMENT.**

12 (a) IN GENERAL.—Paragraph (3) of section 134(b)
13 (relating to qualified military benefit) is amended by add-
14 ing at the end the following new subparagraph:

15 “(C) EXCEPTION FOR DEATH GRATUITY
16 ADJUSTMENTS MADE BY LAW.—Subparagraph
17 (A) shall not apply to any adjustment to the
18 amount of death gratuity payable under chapter
19 75 of title 10, United States Code, which is
20 pursuant to a provision of law enacted before
21 December 31, 1991.”.

22 (b) CONFORMING AMENDMENT.—Section
23 134(b)(3)(A) is amended by striking “subparagraph (B)”
24 and inserting “subparagraphs (B) and (C)”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to deaths occurring
3 after September 10, 2001.

4 **SEC. 4. EXCLUSION FOR AMOUNTS RECEIVED UNDER DE-**
5 **PARTMENT OF DEFENSE HOMEOWNERS AS-**
6 **SISTANCE PROGRAM.**

7 (a) IN GENERAL.—Subsection (a) of section 132 (re-
8 lating to certain fringe benefits) is amended by striking
9 “or” at the end of paragraph (6), by striking the period
10 at the end of paragraph (7) and inserting “, or” and by
11 adding at the end the following new paragraph:

12 “(8) qualified military base realignment and
13 closure fringe.”.

14 (b) QUALIFIED MILITARY BASE REALIGNMENT AND
15 CLOSURE FRINGE.—Section 132 is amended by redesign-
16 ating subsection (n) as subsection (o) and by inserting
17 after subsection (m) the following new subsection:

18 “(n) QUALIFIED MILITARY BASE REALIGNMENT AND
19 CLOSURE FRINGE.—

20 “(1) IN GENERAL.—For purposes of this sec-
21 tion, the term ‘qualified military base realignment
22 and closure fringe’ means 1 or more payments under
23 the authority of section 1013 of the Demonstration
24 Cities and Metropolitan Development Act of 1966

1 (42 U.S.C. 3374) (as in effect on the date of the en-
2 actment of this subsection).

3 “(2) LIMITATION.—With respect to any prop-
4 erty, such term shall not include any payment re-
5 ferred to in paragraph (1) to the extent that the
6 sum of all such payments related to such property
7 exceeds the amount described in clause (1) of sub-
8 section (c) of such section (as in effect on such
9 date).”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to payments made after the date
12 of the enactment of this Act.

13 **SEC. 5. EXPANSION OF COMBAT ZONE FILING RULES TO**
14 **CONTINGENCY OPERATIONS.**

15 (a) IN GENERAL.—Subsection (a) of section 7508
16 (relating to time for performing certain acts postponed by
17 reason of service in combat zone) is amended—

18 (1) by inserting “or when deployed outside the
19 United States away from the individual’s permanent
20 duty station while participating in an operation des-
21 ignated by the Secretary of Defense as a contin-
22 gency operation (as defined in section 101(a)(13) of
23 title 10, United States Code) or which became such
24 a contingency operation by operation of law” after
25 “section 112”,

1 (2) by inserting in the first sentence “or at any
2 time during the period of such contingency oper-
3 ation” after “for purposes of such section”,

4 (3) by inserting “or operation” after “such an
5 area”, and

6 (4) by inserting “or operation” after “such
7 area”.

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 7508(d) is amended by inserting
10 “or contingency operation” after “area”.

11 (2) The heading for section 7508 is amended by
12 inserting “**OR CONTINGENCY OPERATION**” after
13 “**COMBAT ZONE**”.

14 (3) The item relating to section 7508 in the
15 table of sections for chapter 77 is amended by in-
16 serting “or contingency operation” after “combat
17 zone”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to any period for performing an
20 act which has not expired before the date of the enactment
21 of this Act.

1 **SEC. 6. MODIFICATION OF MEMBERSHIP REQUIREMENT**
2 **FOR EXEMPTION FROM TAX FOR CERTAIN**
3 **VETERANS' ORGANIZATIONS.**

4 (a) IN GENERAL.—Subparagraph (B) of section
5 501(c)(19) (relating to list of exempt organizations) is
6 amended by striking “or widowers” and inserting “, wid-
7 ows, ancestors, or lineal descendants”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 the date of the enactment of this Act.

11 **SEC. 7. CLARIFICATION OF THE TREATMENT OF CERTAIN**
12 **DEPENDENT CARE ASSISTANCE PROGRAMS.**

13 (a) IN GENERAL.—Subsection (b) of section 134 (de-
14 fining qualified military benefit) is amended by adding at
15 the end the following new paragraph:

16 “(4) CLARIFICATION OF CERTAIN BENEFITS.—
17 For purposes of paragraph (1), such term includes
18 any dependent care assistance program (as in effect
19 on the date of the enactment of this paragraph) for
20 any individual described in paragraph (1)(A).”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 134(b)(3)(A) (as amended by sec-
23 tion 102) is further amended by inserting “and
24 paragraph (4)” after “subparagraphs (B) and (C)”.

25 (2) Section 3121(a)(18) is amended by striking
26 “or 129” and inserting “, 129, or 134(b)(4)”.

1 (3) Section 3306(b)(13) is amended by striking
2 “or 129” and inserting “, 129, or 134(b)(4)”.

3 (4) Section 3401(a)(18) is amended by striking
4 “or 129” and inserting “, 129, or 134(b)(4)”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to taxable years beginning after
7 December 31, 2002.

8 **SEC. 8. CLARIFICATION RELATING TO EXCEPTION FROM**
9 **ADDITIONAL TAX ON CERTAIN DISTRIBUTIONS FROM QUALIFIED TUITION PRO-**
10 **GRAMS, ETC., ON ACCOUNT OF ATTENDANCE**
11 **AT MILITARY ACADEMY.**
12

13 (a) IN GENERAL.—Subparagraph (B) of section
14 530(d)(4) (relating to exceptions from additional tax for
15 distributions not used for educational purposes) is amend-
16 ed by striking “or” at the end of clause (iii), by redesignig-
17 nating clause (iv) as clause (v), and by inserting after
18 clause (iii) the following new clause:

19 “(iv) made on account of the attend-
20 ance of the designated beneficiary at the
21 United States Military Academy, the
22 United States Naval Academy, the United
23 States Air Force Academy, the United
24 States Coast Guard Academy, or the
25 United States Merchant Marine Academy,

1 to the extent that the amount of the pay-
 2 ment or distribution does not exceed the
 3 costs of advanced education (as defined by
 4 section 2005(e)(3) of title 10, United
 5 States Code, as in effect on the date of the
 6 enactment of this section) attributable to
 7 such attendance, or”.

8 (b) EFFECTIVE DATE.—The amendment made by
 9 this section shall take effect for taxable years beginning
 10 after December 31, 2002.

11 **SEC. 9. ABOVE-THE-LINE DEDUCTION FOR OVERNIGHT**
 12 **TRAVEL EXPENSES OF NATIONAL GUARD**
 13 **AND RESERVE MEMBERS.**

14 (a) DEDUCTION ALLOWED.—Section 162 (relating to
 15 certain trade or business expenses) is amended by redesignig-
 16 nating subsection (p) as subsection (q) and inserting after
 17 subsection (o) the following new subsection:

18 “(p) TREATMENT OF EXPENSES OF MEMBERS OF
 19 RESERVE COMPONENT OF ARMED FORCES OF THE
 20 UNITED STATES.—For purposes of subsection (a)(2), in
 21 the case of an individual who performs services as a mem-
 22 ber of a reserve component of the Armed Forces of the
 23 United States at any time during the taxable year, such
 24 individual shall be deemed to be away from home in the
 25 pursuit of a trade or business for any period during which

1 such individual is away from home in connection with such
2 services.”.

3 (b) DEDUCTION ALLOWED WHETHER OR NOT TAX-
4 PAYER ELECTS TO ITEMIZE.—Paragraph (2) of section
5 62(a) (relating to certain trade and business deductions
6 of employees) is amended by adding at the end the fol-
7 lowing new subparagraph:

8 “(E) CERTAIN EXPENSES OF MEMBERS OF
9 RESERVE COMPONENTS OF THE ARMED FORCES
10 OF THE UNITED STATES.—The deductions al-
11 lowed by section 162 which consist of expenses,
12 determined at a rate not in excess of the rates
13 for travel expenses (including per diem in lieu
14 of subsistence) authorized for employees of
15 agencies under subchapter I of chapter 57 of
16 title 5, United States Code, and not in excess
17 of \$1,500, paid or incurred by the taxpayer in
18 connection with the performance of services by
19 such taxpayer as a member of a reserve compo-
20 nent of the Armed Forces of the United States
21 for any period during which such individual is
22 more than 100 miles away from home in con-
23 nection with such services.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts paid or incurred in tax-
3 able years beginning after December 31, 2002.

4 **SEC. 10. TAX RELIEF AND ASSISTANCE FOR FAMILIES OF**
5 **ASTRONAUTS WHO LOSE THEIR LIVES ON A**
6 **SPACE MISSION.**

7 (a) INCOME TAX RELIEF.—

8 (1) IN GENERAL.—Subsection (d) of section
9 692 (relating to income taxes of members of Armed
10 Forces and victims of certain terrorist attacks on
11 death) is amended by adding at the end the fol-
12 lowing new paragraph:

13 “(5) RELIEF WITH RESPECT TO ASTRO-
14 NAUTS.—The provisions of this subsection shall
15 apply to any astronaut whose death occurs while on
16 a space mission, except that paragraph (3)(B) shall
17 be applied by using the date of the death of the as-
18 tronaut rather than September 11, 2001.”.

19 (2) CONFORMING AMENDMENTS.—

20 (A) Section 5(b)(1) is amended by insert-
21 ing “, astronauts,” after “Forces”.

22 (B) Section 6013(f)(2)(B) is amended by
23 inserting “, astronauts,” after “Forces”.

24 (3) CLERICAL AMENDMENTS.—

1 (A) The heading of section 692 is amended
2 by inserting “, **ASTRONAUTS,**” after
3 “**FORCES**”.

4 (B) The item relating to section 692 in the
5 table of sections for part II of subchapter J of
6 chapter 1 is amended by inserting “, astro-
7 nauts,” after “Forces”.

8 (4) EFFECTIVE DATE.—The amendments made
9 by this subsection shall apply with respect to any as-
10 tronaut whose death occurs after December 31,
11 2002.

12 (b) DEATH BENEFIT RELIEF.—

13 (1) IN GENERAL.—Subsection (i) of section 101
14 (relating to certain death benefits) is amended by
15 adding at the end the following new paragraph:

16 “(4) RELIEF WITH RESPECT TO ASTRO-
17 NAUTS.—The provisions of this subsection shall
18 apply to any astronaut whose death occurs while on
19 a space mission.”.

20 (2) CLERICAL AMENDMENT.—The heading for
21 subsection (i) of section 101 is amended by inserting
22 “OR ASTRONAUTS” after “VICTIMS”.

23 (3) EFFECTIVE DATE.—The amendments made
24 by this subsection shall apply to amounts paid after

1 December 31, 2002, with respect to deaths occurring
2 after such date.

3 (c) ESTATE TAX RELIEF.—

4 (1) IN GENERAL.—Subsection (b) of section
5 2201 (defining qualified decedent) is amended by
6 striking “and” at the end of paragraph (1)(B), by
7 striking the period at the end of paragraph (2) and
8 inserting “, and”, and by adding at the end the fol-
9 lowing new paragraph:

10 “(3) any astronaut whose death occurs while on
11 a space mission.”.

12 (2) CLERICAL AMENDMENTS.—

13 (A) The heading of section 2201 is amend-
14 ed by inserting “, **DEATHS OF ASTRO-**
15 **NAUTS,**” after “**FORCES**”.

16 (B) The item relating to section 2201 in
17 the table of sections for subchapter C of chap-
18 ter 11 is amended by inserting “, deaths of as-
19 tronauts,” after “Forces”.

20 (3) EFFECTIVE DATE.—The amendments made
21 by this subsection shall apply to estates of decedents
22 dying after December 31, 2002.

1 **SEC. 11. PROTECTION OF SOCIAL SECURITY.**

2 The amounts transferred to any trust fund under
3 title II of the Social Security Act shall be determined as
4 if this Act (other than this section) had not been enacted.

Passed the House of Representatives April 9, 2003.

Attest:

JEFF TRANDAHL,

Clerk.